

ASSEMBLY, No. 358

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman HOLZAPFEL

1 AN ACT concerning alcohol concentration in the blood or breath of a
2 person operating a motor vehicle while under the influence of
3 intoxicating liquors and amending R.S.39:4-50.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. R.S.39:4-50 is amended to read as follows:

9 39:4-50. (a) A person [who operates] shall not operate a motor
10 vehicle while under the influence of intoxicating liquor, narcotic,
11 hallucinogenic or habit-producing drug, or [operates] operate a motor
12 vehicle with [a blood] an alcohol concentration of 0.10% or more [by
13 weight of alcohol in the defendant's blood] or [permits] permit another
14 person who is under the influence of intoxicating liquor, narcotic,
15 hallucinogenic or habit-producing drug to operate a motor vehicle
16 owned by him or in his custody or control or [permits] permit another
17 to operate a motor vehicle with [a blood] an alcohol concentration of
18 0.10% or more [by weight of alcohol in the defendant's blood,]. As
19 used in this section, "alcohol concentration" means grams of alcohol
20 per 100 milliliters of blood if blood is tested or grams of alcohol per
21 210 liters of breath if breath is tested. A person who violates this
22 section shall be subject:

23 (1) For the first offense, to a fine of not less than \$250.00 nor
24 more than \$400.00 and a period of detainment of not less than 12
25 hours nor more than 48 hours spent during two consecutive days of
26 not less than six hours each day and served as prescribed by the
27 program requirements of the Intoxicated Driver Resource Centers
28 established under subsection (f) of this section and, in the discretion
29 of the court, a term of imprisonment of not more than 30 days and
30 shall forthwith forfeit his right to operate a motor vehicle over the
31 highways of this State for a period of not less than six months nor
32 more than one year.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) For a second violation, a person shall be subject to a fine of not
2 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
3 the court to perform community service for a period of 30 days, which
4 shall be of such form and on such terms as the court shall deem
5 appropriate under the circumstances, and shall be sentenced to
6 imprisonment for a term of not less than 48 consecutive hours, which
7 shall not be suspended or served on probation, nor more than 90 days,
8 and shall forfeit his right to operate a motor vehicle over the highways
9 of this State for a period of two years upon conviction, and, after the
10 expiration of said period, he may make application to the Director of
11 the Division of Motor Vehicles for a license to operate a motor
12 vehicle, which application may be granted at the discretion of the
13 director, consistent with subsection (b) of this section.

14 (3) For a third or subsequent violation, a person shall be subject to
15 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
16 of not less than 180 days, except that the court may lower such term
17 for each day, not exceeding 90 days, served performing community
18 service in such form and on such terms as the court shall deem
19 appropriate under the circumstances and shall thereafter forfeit his
20 right to operate a motor vehicle over the highways of this State for 10
21 years.

22 If the driving privilege of any person is under revocation or
23 suspension for a violation of any provision of this Title at the time of
24 any conviction for a violation of this section, the revocation or
25 suspension period imposed shall commence as of the date of
26 termination of the existing revocation or suspension period. A court
27 that imposes a term of imprisonment under this section may sentence
28 the person so convicted to the county jail, to the workhouse of the
29 county wherein the offense was committed, to an inpatient
30 rehabilitation program or to an Intoxicated Driver Resource Center or
31 other facility approved by the Director of the Division of Alcoholism
32 and Drug Abuse in the Department of Health; provided that for a third
33 or subsequent offense a person shall not serve a term of imprisonment
34 at an Intoxicated Driver Resource Center as provided in subsection (f).

35 A person who has been convicted of a previous violation of this
36 section need not be charged as a second or subsequent offender in the
37 complaint made against him in order to render him liable to the
38 punishment imposed by this section on a second or subsequent
39 offender, but if the second offense occurs more than 10 years after the
40 first offense, the court shall treat the second conviction as a first
41 offense for sentencing purposes and if a third offense occurs more than
42 10 years after the second offense, the court shall treat the third
43 conviction as a second offense for sentencing purposes.

44 (b) A person convicted under this section must satisfy the
45 screening, evaluation, referral, program and fee requirements of the
46 Division of [Alcoholism's] Alcoholism and Drug Abuse's Intoxicated

1 Driving Programs Unit, and of the Intoxicated Driver Resource
2 Centers and a program of alcohol education and highway safety, as
3 prescribed by the Director of the Division of Motor Vehicles. The
4 sentencing court shall inform the person convicted that failure to
5 satisfy such requirements shall result in a mandatory two day term of
6 imprisonment in a county jail and a driver license revocation or
7 suspension and continuation of revocation or suspension until such
8 requirements are satisfied, unless stayed by court order in accordance
9 with Rule 7:8-2 of the N.J. Court Rules, 1969, or R.S.39:5-22. Upon
10 sentencing, the court shall forward to the Bureau of Alcohol
11 Countermeasures within the Intoxicated Driving Programs Unit a copy
12 of a person's conviction record. A fee of \$80.00 shall be payable to
13 the Alcohol Education, Rehabilitation and Enforcement Fund
14 established pursuant to section 3, P.L.1983, c.531 (C.26:2B-32) to
15 support the Intoxicated Driving Programs Unit.

16 (c) Upon conviction of a violation of this section, the court shall
17 collect forthwith the New Jersey driver's license or licenses of the
18 person so convicted and forward such license or licenses to the
19 Director of the Division of Motor Vehicles. The court shall inform the
20 person convicted that if he is convicted of personally operating a
21 motor vehicle during the period of license suspension imposed
22 pursuant to subsection (a) of this section, he shall, upon conviction, be
23 subject to the penalties established in R.S.39:3-40. The person
24 convicted shall be informed orally and in writing. A person shall be
25 required to acknowledge receipt of that written notice in writing.
26 Failure to receive a written notice or failure to acknowledge in writing
27 the receipt of a written notice shall not be a defense to a subsequent
28 charge of a violation of R.S.39:3-40. In the event that a person
29 convicted under this section is the holder of any out-of-state driver's
30 license, the court shall not collect the license but shall notify forthwith
31 the director, who shall, in turn, notify appropriate officials in the
32 licensing jurisdiction. The court shall, however, revoke the
33 nonresident's driving privilege to operate a motor vehicle in this State,
34 in accordance with this section. Upon conviction of a violation of this
35 section, the court shall notify the person convicted, orally and in
36 writing, of the penalties for a second, third or subsequent violation of
37 this section. A person shall be required to acknowledge receipt of that
38 written notice in writing. Failure to receive a written notice or failure
39 to acknowledge in writing the receipt of a written notice shall not be
40 a defense to a subsequent charge of a violation of this section.

41 (d) The Director of the Division of Motor Vehicles shall
42 promulgate rules and regulations pursuant to the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to
44 establish a program of alcohol education and highway safety, as
45 prescribed by this act.

46 (e) Any person accused of a violation of this section who is liable

1 to punishment imposed by this section as a second or subsequent
2 offender shall be entitled to the same rights of discovery as allowed
3 defendants pursuant to the Rules Governing Criminal Practice, as set
4 forth in the Rules Governing the Courts of the State of New Jersey.

5 (f) The counties, in cooperation with the Division of Alcoholism
6 and Drug Abuse and the Division of Motor Vehicles, but subject to the
7 approval of the Division of Alcoholism and Drug Abuse, shall
8 designate and establish on a county or regional basis Intoxicated
9 Driver Resource Centers. These centers shall have the capability of
10 serving as community treatment referral centers and as court monitors
11 of a person's compliance with the ordered treatment, service
12 alternative or community service. All centers established pursuant to
13 this subsection shall be administered by a certified alcoholism
14 counsellor or other professional with a minimum of five years'
15 experience in treatment of alcoholism. All centers shall be required to
16 develop individualized treatment plans for all persons attending the
17 centers; provided that the duration of any ordered treatment or referral
18 shall not exceed one year. It shall be the center's responsibility to
19 establish networks with the community alcohol education, treatment
20 and rehabilitation resources and to receive monthly reports from the
21 referral agencies regarding a person's participation and compliance
22 with the program. Nothing in this subsection shall bar these centers
23 from developing their own education and treatment programs;
24 provided that they are approved by the Division of Alcoholism and
25 Drug Abuse.

26 Upon a person's failure to report to the initial screening or any
27 subsequent ordered referral, the Intoxicated Driver Resource Center
28 shall promptly notify the sentencing court of the person's failure to
29 comply.

30 Required detention periods at the Intoxicated Driver Resource
31 Centers shall be determined according to the individual treatment
32 classification assigned by the Bureau of Alcohol Countermeasures.
33 Upon attendance at an Intoxicated Driver Resource Center, a person
34 shall be assessed a per diem fee of \$50.00 for the first offender
35 program or a per diem fee of \$75.00 for the second offender program,
36 as appropriate.

37 The centers shall conduct a program of alcohol education and
38 highway safety, as prescribed by the Director of the Division of Motor
39 Vehicles.

40 The Director of the Division of Alcoholism and Drug Abuse shall
41 adopt rules and regulations pursuant to the "Administrative Procedure
42 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
43 purposes of this subsection.

44 (cf: P.L.1986, c.126, s.1)

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46 2. This act shall take effect on the 30th day after enactment.

STATEMENT

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This bill establishes by statute the standard by which the alcohol concentration in the blood or breath of a person charged with operating a motor vehicle while under the influence of intoxicating liquors is to be measured. Under current law, a person who operates a motor vehicle with an alcohol concentration of 0.10% or more by weight of alcohol in the blood is guilty of driving while under the influence of intoxicating liquors. The 0.10% alcohol concentration would be maintained, but the statute would specifically require that it be measured as either 0.10 grams of alcohol per 100 milliliters of blood if blood is tested or 0.10 grams of alcohol per 210 liters of breath if breath is tested. 0.10 grams of alcohol per 100 milliliters of blood is equivalent to 0.10 grams of alcohol per 210 liters of breath.

Clarifies measurement of alcohol concentration in blood or breath for drunk driving.